

*original*

**LEIBOWITZ & ASSOCIATES, P.A.**

MATTHEW L. LEIBOWITZ  
JOSEPH A. BELISLE  
ILA L. FELD  
KARSTEN AMLIE

OF COUNSEL  
AARON P. SHAINIS  
LEE PELTZMAN

\* NOT ADMITTED TO  
FLORIDA BAR

SUITE 450  
SUNBANK INTERNATIONAL CENTER  
ONE SOUTHEAST THIRD AVENUE  
MIAMI, FLORIDA 33131-1715  
TELEPHONE (305) 530-1322  
TELECOPIER (305) 530-9417

SUITE 200  
2000 L STREET, N.W.  
WASHINGTON, D.C. 20038

**RECEIVED**

**JUL 7 1995**

July 7, 1995

Office of the Secretary  
Federal Communications Commission  
Room 222  
1919 M Street, N.W.  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

DOCKET FILE COPY ORIGINAL

DOCKET FILE COPY ORIGINAL

RE: Comments in PP Docket No. 93-253

Ladies and Gentlemen:

Enclosed please find an original and four copies of Comments being filed by MasTec, Inc. in response to the Commission's Further Notice of Proposed Rulemaking in the above referenced docket.

If you should have any questions concerning this filing, please contact me.

Sincerely yours,



Karsten Amlie  
Counsel for MasTec, Inc.

**Enclosures**

cc: The Honorable James H. Quello  
The Honorable Andrew C. Barrett  
The Honorable Rachelle B. Chong  
The Honorable Susan Ness  
Ruth Milkman  
Rudolfo M. Baca  
Lisa B. Smith  
Jane Mago  
Jill Luckett  
Mary P. McManus  
Andrew Sinwell

William E. Kennard  
Jackie Chorney  
Kathleen O'Brian Harp  
Rosalind Allen  
Anthony Williams  
Catherine Sandoval  
Regina Keeney  
Donald H. Gips  
Robert H. Pepper  
Gerald P. Vaughn  
Jonathan Cohen

No. of Copies rec'd  
List ABCDE

*024*

No. of Copies rec'd  
List ABCDE

DOCKET FILE COPY ORIGINAL

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )

DOCKET FILE COPY ORIGINAL

Implementation of Section 309(j)  
of the Communications Act-  
Competitive Bidding )

PP Docket No. 93-253

Amendment of the Commission's  
Cellular PCS Cross-Ownership Rule )

GN Docket No. 90-314

Implementation of Section 3(n) and 332 )  
of the Communications Act )  
Regulatory Treatment of Mobile Services )

GN Docket No. 93-252

**COMMENTS**

1. The Commission in its Further Notice of Proposed Rule Making, in the above referenced dockets, sought comments with respect to proposed measures the Commission sought to adopt to address the legal uncertainties raised by the Adarand Constructors, Inc. v. Pena decision.<sup>1</sup> MasTec, Inc. through its undersigned counsel submits the following comments.<sup>2</sup>

2. MasTec, Inc. (MasTec) an Hispanic controlled company, has been actively engaged in the Commission's various rule makings and deliberations in PCS, a timely and costly undertaking, and intended to proceed to participate in the C Block auctions. However, in light of the proposed rules, MasTec would be barred from participation.

3. MasTec, a corporation which has approximately 65% Hispanic ownership and which is controlled by Hispanic management has its origin in two pre-existing wholly owned and controlled

---

<sup>1</sup> 63 U.S.L.W. 4523 (U.S. June 12, 1995).

<sup>2</sup> MasTec will not address the wisdom or the merits of the Adarand decision.

small Hispanic companies. Specifically, Church and Tower, Inc. and Church and Tower of Florida, Inc. had combined gross revenues of less than \$40 million prior to 1994.<sup>3</sup> In 1994, the two Church and Tower companies entered into a "reverse acquisition" with Burnup & Sims.<sup>4</sup> In this transaction, Burnup & Sims issued common stock to the shareholders of the two Church & Tower companies in exchange for all of the outstanding stock of the two Church and Tower companies. Burnup & Sims, therefore, owned the two Church and Tower companies after the exchange of stock. However, the former shareholders of the two Church and Tower companies received approximately 65% of the outstanding shares of Burnup & Sims. Thus, these Hispanic shareholders now control Burnup & Sims and its Board of Directors. Burnup & Sims has been renamed MasTec, Inc. As reflected above, MasTec, Inc. therefore is the evolved Church and Tower Companies as a result of their natural growth and development. See Chart Attached hereto as Exhibit I. In 1994, MasTec had gross revenues of approximately \$142 million as the result of its growth.

4. Both Church and Tower companies are Small Business and yet due to the present rule for determining eligibility for participation in the Entrepreneur's Block auctions, they may be precluded from participation in the auctions. The present rules act as a bar to those entities affiliated with successful small businesses which have, during the prolonged pendency of this proceeding, experienced an appreciation in their gross revenues. The Commission, in the Fifth Memorandum Opinion and Order, FCC 94-285 ¶27 adopted (November 10, 1994), recognized that during the license holding period affiliates will grow financially and may even be subject to takeovers. However,

---

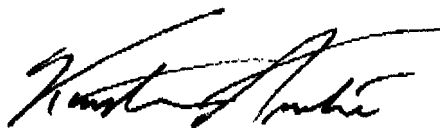
<sup>3</sup> The companies also had assets less than \$500 million.

<sup>4</sup> Prior to 1994, Burnup & Sims had gross revenues in excess of \$125 million but less than \$500 million in assets.

in that proceeding, the Commission stated that "normal projected growth of gross revenues and assets, or growth such as would occur as a result of a control group members' attributable investments appreciating, or as a result of a licensee acquiring additional licenses would not generally jeopardize continued eligibility as an entrepreneur's block licensee." Id. at ¶ 27. Yet, the Commission's present rules currently do not appreciate that during the time the Entrepreneur Block auctions were first initiated, affiliates have grown financially and appreciated in value. As a result, prospective applicants, such as either of the two Church and Tower companies, which control affiliates that have experienced a great degree of success and growth may now unfairly be precluded from applying for PCS licenses.

5. Accordingly, MasTec, Inc. would respectfully request that the Commission, in its revised rules recognize small pre-existing businesses, and their affiliates, that have grown and developed since January, 1994, through processes such as a reverse acquisition and determine that such small businesses remain qualified for Block C. In this manner, the Commission will be assured of participation by qualified Hispanic participation in the Block C auction.

Respectfully submitted,



Matthew L. Leibowitz  
Karsten Amlie  
Counsel for MasTec, Inc.

July 7, 1995  
Leibowitz & Associates, P.A.  
One S.E. Third Avenue, Suite 1450  
Miami, FL 33131

**DEMONSTRATIVE CHART**